vss

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.459 OF 2002

Mahesh Madhukar Paricharak
Convict No.C-12088
Yerawada Central Prison
Pune ... Appellant

V/s.

State of Maharashtra ... Respondent

Mr.V.N. Kamble for Appellant
Dr.F.R. Shaikh, APP, for Respondent

CORAM: **V.G. PALSHIKAR, Ag. C.J. & SMT.NISHITA MHATRE, J.**

DATED: **AUGUST 29, 2006**

ORAL JUDGMENT (PER SMT.MHATRE, J.):

. The appeal arises from the judgement and order of the II Additional Sessions Judge, Pandharpur in Sessions Case No.110 of 1999. The appellant has been convicted under section 302 of the Indian Penal Code and sentenced to life imprisonment for having murdered his wife on 28.5.1999. The prosecution has alleged that the appellant suspected the chastity of his wife Varsha and often ill treated her. On 28.5.1999 between 1 am and 2 am, he killed Varsha by giving her blows on her head with an iron rod. Varsha died in the Civil hospital at Solapur at 6.35 am on the same day. Her death was initially considered to be an accident and it was registered as such being A.D. No.61/1999. The

Appellant had informed the police that Varsha had a fatal fall from the terrace of their house. However, the police continued to investigate the matter and the appellant was arrested and charged for having murdered his wife. The prosecution has examined 7 witnesses. Two of these witnesses PW2 and PW3 are eye witnesses according to the prosecution. PW1 is the mother of the deceased Varsha. PW4 is her sister. PW5 is the panch witness who has deposed to the Spot Panchanama. PW6 is the photographer from the laboratory where four photographs were developed by the police. PW7 is the Investigating Officer.

2. PW1 and PW4 have deposed stating that there were frequent quarrels between the deceased and the appellant, her husband. These quarrels occurred mainly because the appellant suspected the character of his wife. Both these witnesses have stated that they learnt about Varsha’s death soon after the incident. The only material part of their deposition is that there were frequent quarrels between the appellant and the deceased.

3. PW2 and PW3 are witnesses who have been examined by the prosecution to prove that they actually witnessed the incident. PW2 has stated that she saw the deceased being hit by the appellant with an iron rod at night

around 1 am. She is a neighbour of the deceased and she had heard the sound of someone being hit and shouting due to which she awoke and also woke up her husband. She has deposed that she and her husband then looked through the window and found that the appellant was hitting on the deceased on the head with an iron rod. She then has stated that she and her husband requested the appellant to refrain from hitting the deceased and called out to her neighbours. She has stated that by this time both Varsha and the appellant had come out of their house. Varsha suffered from a bleeding injury in the head. She sat on the courtyard and then lay on the ground. Varsha was then taken to hospital in an autorickshaw. This witness has candidly admitted that the height of the roof above the ground is not much. Stones and bricks were lying in front of the house of the accused. A suggestion put to her that the appellant and his wife usually slept on the slope of their house has been admitted by this witness but she has stated that on the fateful night the appellant and deceased were sleeping inside their house. She has agreed that when the incident occurred she was sleeping on the slab of her own house. The witness has then admitted that the height of the window is about 6’ from the ground. This witness has not been able to withstand the searching cross-examination that she was subjected to. The witness has then admitted that when she came out of

her house, after hearing the shout, she saw Varsha lying in her courtyard. The accused was present at that point of time. PW3, the husband of PW2 essentially has stated that he was woken up by his wife after she heard a noise and shouting. He has then stated that the deceased came out of her house with bleeding injuries on her head. He has then stated that he looked through the window of the appellant's house and found that there were blood stains on the bed and that the iron rod was lying beside the bed. This witness has been declared hostile and he has been crossexamined on behalf of the State.

4. The deposition of PW3 again is not very material. Therefore, the entire prosecution case revolves around the testimony of PW2 who claims to have seen the incident from the window. We will therefore, have to consider (i) as to whether the prosecution has proved that the death of the deceased was homicidal and not accidental; (ii) if the death is homicidal, whether the appellant is in any way responsible for this death.

5. Admittedly, the immediate reaction of the police was to register a case of accidental death after the appellant reported that the deceased Varsha had fallen off the slope of the roof terrace while she was asleep. It was only after investigations continued that the appellant was arrested and arraigned. The postmortem

report indicates that the deceased died of shock and haemorrhage due to the fracture of the skull bones with a skull injury at the base as well as an injury to the brain. Various wounds and injuries have been sustained by the deceased and have been recorded by the Doctor. Unfortunately, this Doctor who conducted the postmortem examination has not been examined before the Court by the prosecution.

6. Therefore, there is no clear evidence that the injury sustained by the deceased was only on account of an iron rod being struck on her head and was not possible due to a fall off the slope of the roof. This lack of evidence in our opinion is fatal to the prosecution case for conclusively proving that it was a homicidal death.

7. PW2 who claims to have witnessed the incident and the assault on the deceased by the appellant has not been consistent in her deposition. The crossexamination of this witness has torn the case of the prosecution asunder. She has admitted that on that fateful night, she was sleeping on the slab of her house which presumably must be the terrace. She has also stated that she heard a thud or a sound of something falling followed by a shout. It was only thereafter that she claims she looked through the window and saw the

appellant striking his wife. The theory of the prosecution, that the death is homicidal since the appellant struck his wife, is sought to be substantiated by relying on the Seizure Panchanama and the reports from the Chemical Analyser. These reports indicate that the iron rod had blood of 'A' group on it and the saree worn by the deceased also had blood of 'A' group. Similarly, the shirt worn by the deceased also had blood of the same group. The prosecution has relied on this evidence in order to establish that it was the blood of the deceased which was found on the iron rod, her saree and the shirt of the appellant. However, the record does not show what the blood group of the deceased was. In fact, the appellant's blood has been analysed and it belongs to blood group 'A'. In such circumstances, it would be difficult to accept the case of the prosecution that the appellant had in fact murdered his wife.

8. There is no doubt that there is evidence on record to indicate that the appellant and the deceased had frequent quarrels as he suspected her chastity. However, this by itself would not lead to an inference that it was he who committed the murder. Even this fact of frequent quarrels coupled with the evidence of PW2 and the medical evidence on record does not lead to the inference that it is the appellant who has committed the crime. There is material lack of evidence to link the

appellant with the crime.

9. The story of the appellant-accused that the deceased rolled over the slope when she was asleep and fell on the ground is plausible and casts a doubt on the case of the prosecution. In our opinion, therefore, the prosecution has failed to link the appellant to the death of his wife and has thus, failed to prove that he is guilty of the offence punishable under section 302 of the Indian Penal Code.

10. In these circumstances, the Appeal is allowed. The appellant who is now in jail be set free forthwith, if not otherwise required in law.